APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,012	01/18/2002	Douglas Morgan Freimuth	YOR920010561US2	2130

7590   02/16/2005

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EXAMINER
AVELLINO, JOSEPH E

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _1_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _09 April 2002_.

2a)☐ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-20_ is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) _1-20_ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
      application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1.   Restriction to one of the following inventions is required under 35 U.S.C. 121:

    I.   Claims 1-14, and 18-20, drawn to a method differentiating at least one
        service class in a kernel to perform service differentiation based on
        content in at least one data packet, including the steps of capturing at
        least one data packet until a complete application header is detected,
        parsing said complete application header to determine at least one
        application tag, matching said at least one application tag to at least one
        matching rule, determining a presence of at least one match with said at
        least one matching rule, and performing service differentiation action
        based on said at least one matching rule, classified in class 709, subclass
        227.

    II.   Claims 15-17, and 21, drawn to an apparatus including a policy agent
        including a communicator to communicate from a user space to a kernel
        with an application interface, an initializer to instantiate service
        differentiation rules for an application tag within the kernel which includes
        a classification and action rules, a manager to delete and update rules on
        a user request, classified in class 709, subclass 224.

The inventions are distinct, each from the other because of the following reasons:

2.   Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as a method differentiating at least one service class in a kernel to perform service differentiation based on content in at least one data packet, including the steps of capturing at least one data packet until a complete application header is detected, parsing said complete application header to determine at least one application tag, matching said at least one application tag to at least one matching rule, determining a presence of at least one match with said at least one matching rule, and performing service differentiation action based on said at least one matching rule, but lacks an apparatus including a policy agent including a communicator to communicate from a user space to a kernel with an application interface, an initializer to instantiate service differentiation rules for an application tag within the kernel which includes a classification and action rules, a manager to delete and update rules on a user request. Invention II has separate utility such as an apparatus including a policy agent including a communicator to communicate from a user space to a kernel with an application interface, an initializer to instantiate service differentiation rules for an application tag within the kernel which includes a classification and action rules, a manager to delete and update rules on a user request, but lacks a method differentiating at least one service class in a kernel to perform service differentiation based on content in at least one data packet, including the steps of capturing at least one data packet until a

complete application header is detected, parsing said complete application header to determine at least one application tag, matching said at least one application tag to at least one matching rule, determining a presence of at least one match with said at least one matching rule, and performing service differentiation action based on said at least one matching rule. See MPEP § 806.05(d).

3.   Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4.   Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5.   Group I search (Claims 1-14, and 18-20) would require use of search of class 709, subclass 227 (which would not be required for Group II).

6.   Group II search (Claims 15-17, and 21) would require use of search of class 709, subclass 224 (which would not be required for Group I).

7.   A telephone call was made to Louis Herzberg on January 26, 2005 to request an oral election to the above restriction requirement, but did not result in an election being made. Messages were left however no response was received.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

8.   Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

JEA
January 19, 2005
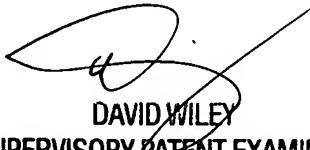
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